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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,812	07/02/2001	Gregorio Di Cesare	D-43072-01-W	7774

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CRYOVAC, INC.  
SEALED AIR CORP  
P.O. BOX 464  
DUNCAN, SC 29334

EXAMINER

VO, HAI

ART UNIT PAPER NUMBER

1771

DATE MAILED: 09/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/806,812

Applicant(s)

CESARE ET AL.

Examiner

Hai Vo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 9, the phrase "the like polymers" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "the like"); thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 07-060816. JP'816 discloses a multiplayer foamed sheet formed by coextrusion and comprising one unformed layer interposed between the two foam polypropylene layers (abstract, page 2, [0012] and figure C). JP'816 discloses the expansion ratio of the first foam layer is 1.2 to 5 times whereas the expansion ratio of the second foam layer is 1.01-1.1

times (abstract). Since the expansion ratios of the two foam layers are different and the expansion ratio dictates the flexural modulus of the foam, it is the examiner's position that the two foam layers would have different flexural strength.

With regard to claims 2, 3 and 10, since JP'816 is using the same materials and the same process, i.e., chemical foaming to make a foam and coextrusion (page 2, [0012], [0013]) to form the multilayer foamed sheet as Applicant, and the multilayer foamed sheet of JP'816 meets all the structures recited by the claims, it is the examiner's position that the density and the flexural modulus would be inherently present within the range as set forth in the claims. In addition, the examiner wishes to point out that as USPTO is unequipped to perform the necessary experimentation, the burden to show that the foamed sheet of JP'816 having the flexural modulus and the density outside the instantly claimed ranges is shifted to Applicant.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-6, and 8-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GB 2 263 435. GB'435 discloses a plastic laminate produced by coextrusion and having a

layer construction as follows: facing layer/ core layer/ tie layer/gas barrier layer/tie layer/core layer/ facing layer (page 4, lines 25-35). The core layer comprises foamed polypropylene that is formed from chemical foaming (page 3, lines 1 and 25). The gas barrier layer is made of an ethylene-vinyl alcohol copolymer (page 4, lines 15-18). The facing layer is formed from a copolymer of propylene and ethylene (page 2, lines 25-27). The density of the foam layers is 0.6 g/cm<sup>3</sup> (page 6, line 33). Since GB'435 is using the same materials and the same process, i.e., chemical foaming to make a foam and coextrusion to form the multilayer foamed sheet as Applicant, and the multiplayer foamed sheet of GB'435 meets all the structures recited by the claims, it is the examiner's position that the flexural modulus of the two foam layers would be inherently present within the range as set forth in the claims. Note In re Best 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made under 35 USC 102. Further, the examiner wishes to point out that as USPTO is unequipped to perform the necessary experimentation, the burden to show that the foamed sheet of GB'435 having the flexural modulus outside the instantly claimed range is shifted to Applicant.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2 263 435 as applied to claim 1 above, in view of WO 91/13933. GB is silent as to the tie layer being formed from a modified polyolefin. WO'933 supplies the missing feature. WO'933 discloses a tie layer being made of olefin copolymer (page 19). It would have been obvious to one having ordinary skill in the art at

the time the invention was made to employ an olefin copolymer as the tie layer of GB'435 motivated by the desire to hold the gas barrier layer to the foam layer effectively.

8. Claims 1-11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Finkelstein et al (US 6,194,042). Finkelstein discloses a liner produced by coextrusion and having a layer construction as follows: facing layer/ core layer/ tie layer/gas barrier layer/tie layer/core layer/ facing layer (figure 4). The core layer comprises foamed polypropylene that is formed from chemical foaming (column 7, lines 32-54). The gas barrier layer is made of polyvinylidene chloride (column 6, line 52). The facing layer is formed from ethylene vinyl acetate copolymer (column 5, line 54). The tie layer is made of ethylene acrylic acid copolymer (column 8, line 64). Since Finkelstein is using the same materials and the same process, i.e., chemical foaming to make a foam and coextrusion to form the multilayer foamed sheet as Applicant, and the liner of Finkelstein meets all the structures recited by the claims, it is the examiner's position that the foam density and the flexural modulus of the two foam layers would be inherently present within the range as set forth in the claims. Note In re Best 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made under 35 USC 102. Further, the examiner wishes to point out that as USPTO is unequipped to perform the necessary experimentation, the burden to show that the liner of

Finkelstein having the flexural modulus and the foam density outside the instantly claimed ranges is shifted to Applicant.


***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00 (EAST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV  
September 18, 2002



TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700